UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

International Brotherhood of Electrical Workers, Local 98, Respondent	:	Case 04-CC-229379
and	:	
Post General Contracting, LLC d/b/a Post Brothers, Charging Party	:	

CHARGING PARTY'S ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS TO THE CHIEF ADMINISTRATIVE LAW JUDGE'S DECISION

Dated: July 1, 2020

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I. INTRODUCTION

Charging Party, Post General Contracting, LLC d/b/a Post Brothers ("Post Brothers" or "Charging Party"), submits this brief in answer and in opposition to the Exceptions and Brief filed by the International Brotherhood of Electrical Workers, Local 98 (the "Union" or the "Respondent").

In 2018 Post Brothers hired Major Electric as a subcontractor to perform electrical work at 260 S. Broad Street, Philadelphia Pennsylvania 19102 ("260 S. Broad St."). The Union had an admitted primary dispute with Major Electric as Major Electric is a non-union company. Beginning as early as September 17, 2018 and continuing steadily for the next two months, the Union began configuring a sound system and blasting a recording of a crying baby on a repetitive loop for multiple hours each day. The sounds of the wailing baby were intermittently interrupted from time to time with a brief statement regarding community wages. Residents and Post Brothers representatives continuously implored the Union to reduce the sound of the recording but the Union refused to do so.

Despite these facts, the Union continues to deny that blasting this audio recording constituted "coercive conduct" under the National Labor Relations Act (the "Act"). [1] For the reasons discussed in detail herein, and as Chief Administrative Law Judge Robert A. Giannasi correctly found, the Union's denials have absolutely no merit. Therefore, the Charging Party respectfully requests that the exceptions filed by the Union be denied in their entirety.

II. PROCEDURAL HISTORY

Charging Party filed its initial Charge in this matter on October 17, 2018. At that time the Charging Party requested that the Region pursue injunctive relief in this matter. While the

[1] Similarly, the Union continues to deny that Union representative Brian Eddis threatened Post Brothers employee Patrick Steffa.

Charging Party cannot be sure of the Region's internal reasoning in this particular case, it believes that the Region did not seek injunctive relief because of the delay occasioned by sending this case to the Division of Advice. On October 22, 2019, the Region issued a Complaint and Notice of Hearing alleging that the Union violated Section 8(b)(4)(ii)(B) of the Act by: (1) coercing Post Brothers through the broadcasting of a recording of a crying baby at excessively high volumes; and (2) threatening to set fire to the property of a Post Brother's representative. On October 31, 2019 the Union filed an Answer to the Complaint wherein the Union admitted service of the Charge, jurisdiction, Respondent's status as a labor organization, the agency status of Mr. Eddis and Mr. Donohoe and that at no point in time did the Respondent have a primary labor dispute with Post Brothers. The hearing in this matter was held in Philadelphia, Pennsylvania on February 25 and 26, 2020. On May 6, 2020 the ALJ issued his Decision and found that the Union had violated the Act. On June 3, 2020 the Union filed its exceptions to the ALJ's Decision.

III. STATEMENT OF FACTS

A. Background

By way of background, during the fall of 2018 Post Brothers was in the process of renovating an office building into residential apartments with commercial space on the first floor. (ALJD 2:26-28; T. 82).[2] This construction project took place at 260 S. Broad Street and the apartment complex being constructed was named the "Atlantic Building." During the fall of 2018 the construction process was still underway and thus there were no residential or commercial tenants in the building. (T. 82; J. Ex. 1 at 6). To aid in the construction of the

[2] Throughout this brief, the following abbreviations are utilized: "ALJD" followed by page and line numbers to designate the ALJ's Decision; "T" followed by page number(s) to designate pages from the Transcript of the Hearing; "GC Ex." followed by exhibit number to designate General Counsel's Exhibits.

Atlantic Building, Post Brothers hired subcontractors to perform work throughout the building. Because many of these subcontractors were non-union companies, various Philadelphia based unions began to protest the job site. (T. 82). For example, the Plumbers Local Union 420, Steamfitters Local Union 690 and the International Brotherhood of Electrical Workers, Local 98 would take turns, one week at a time, protesting the site. (T. 82). These protests would include handbills, signs, placards, and the inflatable rat. (T. 82-83). These demonstrations would begin around 7:00 am and go until approximately 2:00 pm. (T. 83).[3]

B. <u>The Crying Baby Set Up</u>

On or about September 18, 2018 a new trend began wherein following the morning demonstrations, the Respondent would arrive on site and begin to set up a sound system. (T. 84). Specifically, John Donohoe a Business Representative of the Union, would arrive in a truck. Other members of the Union would then begin to unpack a gray box from the truck which included two speakers, a receiver, an iPod and a generator power source (the "Crying Baby Speaker System"). (ALJD 3:14-18; T. 85; GC. Ex. 8(a)-(b)). The speakers would then be assembled and pointed directly at the front doors of the Atlantic Building. (ALJD 3:23-25; T. 85). During this time approximately five to six Union members would be present including Mr. Donohoe and Mr. Eddis. (ALJD 3: Note 4). The Union would proceed to utilize the Crying Baby Speaker System to broadcast an audio recording on a repetitive loop. This audio recording consisted of the wailing sounds of a crying baby in distress for approximately thirty seconds followed by a brief six second announcement stating "your community is crying for jobs,

[3] Charging Party notes that its allegations in this matter do not concern the peaceful protests engaged in by the various other unions. This case is not about any inflatable animals. Similarly, the Charging Party has not challenged the legality of peaceful bannering or handbilling in this case.

participation, and fair wages" (the "Crying Baby Recording"). (ALJD 3:21-25; J. Ex. 1 at 5; GC Ex. 3(a)).

C. The First Full Day of The Crying Baby

1. Interactions with Civil Affairs

On the first full day of the Union's use of the Crying Baby Recording, Mr. Steffa contacted the Civil Affairs Unit of the Philadelphia Police Department as well as the Air Management Division of the City of Philadelphia to complain about the noise level produced by the Crying Baby Recording. (ALJD 6:1-6; T. 89). However, prior to the arrival of a representative from either of these departments, two Philadelphia Police Officers arrived at the Atlantic Building – presumably contacted by members of the general public. (T. 89). Despite requests from Mr. Steffa for assistance, these two Officers who arrived on bicycles, did not provide much guidance into the matter but instead waited for the other city departments to respond before departing. (T. 90).

Next on the scene were representatives from the Civil Affairs unit. Mr. Steffa immediately implored one of these representatives, Officer Gary McNeil, to assist in convincing the Union to decrease the volume of the Crying Baby Recording. (T. 90-91). Officer McNeil, however, did not provide any guidance or support, instead deferring to the Air Management Division. (ALJD 6:1-5; T. 91). Approximately one hour later, Gary Everly – a representative from the City's Air Management Division – arrived on the scene. At that time, Mr. Steffa began discussing his complaints with Mr. Everly. Specifically, Mr. Steffa produced a copy of the City of Philadelphia's noise ordinance regarding excessive noise levels. During this conversation Mr. Everly admitted that the Union's broadcast of the Crying Baby Recording was "out of compliance." (ALJD 6:8-12; GC. Ex. 3(b)). However and despite this clear admission that the Union was violating the law, Mr. Everly initially stated that he was not going to enforce the

city's ordinance "because [he] want[ed] them to be able to protest." (ALJD 6:8-12; GC. Ex. 3(b)).

Additionally, during this exchange Mr. Steffa noticed that Mr. Everly was utilizing a handheld decibel meter to measure the sound levels. (T. 104; GC. Ex. 15). Further, Mr. Steffa noticed that this handheld device had a toggle switch which limited the noise level that could be displayed on the device. Specifically, there was a setting for 0-80 (dBs) and a different setting for 80 (dBs)-max. Because the reading that Mr. Everly was showing at the time was 80 (dBs) exactly, Mr. Steffa inquired about this toggle switch. (T. 104; GC. Ex. 15). In response, Mr. Everly flipped the switch to the larger setting and the handheld decibel reader immediately jumped to a reading of approximately 94(dBs). (T. 104; GC. Ex. 15). Mr. Everly noted this volume increase in his notes along with the ambient readings from nearby locations – which evidenced an increase in volume above the ambient sound levels in violation of the city's ordinance (ALJD 6:17-20; GC. Ex. 11, 15). As a result of these volume levels, Mr. Everly assured Mr. Steffa that a citation would be issued against the Union. (ALJD 6:17-20; T. 113-114).[4]

2. <u>Interactions with Brian Eddis</u>

In addition to Mr. Steffa's conversation with Mr. Everly, Mr. Steffa also spoke with Mr. Eddis. (ALJD 9:31-32; T. 107). The two individuals were approximately three feet from one another. (T. 107). However, because the Crying Baby Recording was playing in the background, the two needed to converse at a yelling tone. (T. 107). During this conversation Mr. Eddis questioned Mr. Steffa by asking "what happened to [you]," a clear reference to the

[4] In a text message exchange between Mr. Eddis and Mr. Donohoe the two discuss their intention to appeal the violation from Air Management that they expected to receive as a result of their actions on Day 1. (GC. Ex. 21). This admission provides further support to the ALJ's determination that a violation had occurred.

fact that Mr. Steffa had previously been a member of a different union and now was working for a non-union company (T. 109). Mr. Steffa declined to respond. (T. 109). Realizing he was not getting the response he wanted from Mr. Steffa, Mr. Eddis continued by stating that "he knew where Bridesburg[5] was and that fires happen all the time." (ALJD 9:35-36; T. 109). For context, it should be explained that Mr. Steffa currently owns a bar in Bridesburg and that in December of 2017 a bar in that neighborhood burned down. (T. 109-110). Realizing that Mr. Eddis had just threatened Mr. Steffa's personal safety and the safety of his business, the conversation turned heated for a short period of time before the two parted ways. (T. 110). Following this threat, Mr. Steffa increased the security at his bar by installing video surveillance cameras. (ALJD 9:40-41; T. 128).

D. <u>Day Two of The Crying Baby</u>

The following day the Union returned with the Crying Baby Speaker System and began to broadcast the Crying Baby Recording. (T. 113). Again, Mr. Steffa contacted the appropriate city departments to complain. (T. 113). Only this time, Air Management informed Mr. Steffa that they would not come to the site unless they were contacted by Civil Affairs. (T. 113). Mr. Steffa then contacted Civil Affairs to ask them to contact Air Management. (T. 113). Civil Affairs, however, provided contradictory information and refused to contact Air Management. Finally, after an additional call, Air Management agreed to return. (T. 113).

When Mr. Everly and his supervisor arrived to the site, Mr. Everly informed Mr. Steffa that no citation from the previous day would be issued because of the weather conditions. (ALJD 6:19-20; T. 114; R-1). Instead, Mr. Everly and his supervisor took new noise readings

[5] Bridesburg is a neighborhood within the city limits of Philadelphia Pennsylvania.

and then left the site. (T. 116-117). The Union, however, remained at the Atlantic Building broadcasting the Crying Baby Recording until approximately 6:00 pm that evening. (T. 118).

E. Day Three of The Crying Baby and Beyond

The next day the Union returned with the Crying Baby Speaker System and began to broadcast the Crying Baby Recording. Again, Mr. Steffa contacted Air Management to come to the site to take noise level readings. (T. 118). However, Air Management informed Mr. Steffa, without explanation, that they would no longer come out to the site.[6] (T. 118-119). The Union, however, continued to broadcast the Crying Baby Recording each weekday until approximately October 19, 2018.

F. Testimony Regarding The Volume of The Crying Baby Recording

1. Resident Complaints

The Crying Baby Recording not only effected Post Brothers, but rather many residents in the community began to complain. Diagonally across the street from the Atlantic Building is a residential condominium building called Center City One. During the Hearing, four Center City One residents testified as to their recollection of the Union's broadcasting of the Crying Baby Recording.

A. Pamela Bona

Ms. Bona lives on the 23rd floor of Center City One and testified that she does not oppose unions but instead is "for labor." (T. 35, 43). However, Ms. Bona explained that in the fall of 2018 she began to hear a "horrible blasting recording" of a baby crying. (T. 35). As a result of this "horrible" noise, Ms. Bona was forced to close her windows to escape these "distressing" sounds. (ALJD 5:1-3; T. 36). In fact, the sound of the crying baby was so disturbing to

[6] Following day two, no representative from Air Management ever returned to the site to take additional noise readings.

Ms. Bona that when it was played during the Hearing, Ms. Bona physically winced and began to cover her ears. (T. 35). Further, Ms. Bona testified that the sound of the crying baby, even over a year later, "stirred" her body up and left her "shaking inside." (T. 38). Ms. Bona also explained that she had new windows installed prior to the start of the Crying Baby Recording. (T. 39). These windows were double-paned and ordered specially from Italy. (T. 39). Despite these new double-paned windows, Ms. Bona was still able to hear the Crying Baby Recording – across the street and 23 floors up. Importantly, Ms. Bona explained that she could not distinguish any discernable message included in the Crying Baby Recording, rather she explained it was "just noise." (ALJD 5:2-3; T. 40).

In response to the Crying Baby Recording, Ms. Bona contacted the city of Philadelphia by calling the city help line at 3-1-1. (T. 40). However, Ms. Bona's calls went largely unaddressed and the penetrating noise continued. (T. 40). On October 18, 2018, Ms. Bona, went a step further and contacted city councilmen Kenyatta Johnson and Mark Squilla via email.[7] (T. 43; GC. Ex. 14). In her email, Ms. Bona explained that "the recording starts blasting in the morning and runs through the afternoon, every day that construction at the Atlantic is going on." (GC. Ex. 14).

Ms. Bona further testified that the volume of the Crying Baby Recording was so loud that she was able to hear the Crying Baby Recording as she walked around the city. (ALJD 5:7-9; T. 51-53). Specifically, Ms. Bona testified that she could hear the Crying Baby Recording at the corner of Broad Street and Locust Street as well as at the Corner of 13th Street and Spruce Street. (T. 51-53). These locations are a full city block away from the Atlantic Building. (GC. Ex. 12).

[7] Because Broad Street is the dividing line between two council districts, Councilman Kenyatta Johnson is the councilman for the area wherein the Atlantic Building is located. Councilman Mark Squilla is the Councilman for the area wherein Center City One is located.

Ultimately, Ms. Bona explained that a few days after her emails to the city Councilmen, the recording ceased and did not return. (T. 48).

B. Adam Klein

Mr. Klein is also a resident at Center City One and lives on the 25th Floor. (ALJD 5:3-14; T. 61). During calendar year 2018, Mr. Klein was serving as the president of the Center City One Condominium Association. Mr. Klein explained that there are approximately 182 units in the building and approximately 300 residents residing in the building. (T. 62).

Mr. Klein testified that in the fall of 2018 he could hear the crying baby in his 25th floor apartment despite the fact that he too had recently installed new windows. (T. 62-63). Mr. Klein described the noise as a "constant barrage in his own home" and likened the volume level to that of a teenager being in the home playing "outrageous music in a room and . . . disrupting [his] whole home." (T. 63, 67). Mr. Klein explained that in his estimation the crying baby would last for multiple hours at a time. (ALJD 5:17-18; T. 62). In an attempt to get some relief from the noise he would attempt to get out of the apartment and go to the gym. (ALJD 5:16-17; T. 64). However, at times he resorted to blasting his own music in an effort to drown out the sound of a hysterical baby. (T. 64).

After a few weeks of listening to the "great and penetrating" sound of the Crying Baby Recording, Mr. Klein felt a responsibility as the Condominium Association President to investigate the issue further. First, he spoke with the employee who was sitting at the front desk of the Center City One building to see if other residents had complained. (T. 67-68). Mr. Klein was informed that the front desk was receiving approximately **25-30 complaints each day** regarding the Crying Baby Recording. (T. 67-68). Next, Mr. Klein contacted Councilman Squilla's office to see if anything could be done. (T. 69; GC. Ex. 17). Mr. Klein's email read in part "The noise is loud and is truly impacting the quality of life for the residents of our 30 story

condominium building. While I respect that [the Union] might have legitimate grievances, their tactics are harassing the surrounding community." (GC. Ex. 17).

In addition to hearing the Crying Baby Recording in his 25th floor apartment, Mr. Klein explained that he could also hear the Crying Baby Recording throughout the city. Specifically, Mr. Klein testified that he could hear the baby as far away as the intersection of 15th and Spruce Streets. (T. 71; GC. Ex. 12). Ultimately, Mr. Klein explained that the Crying Baby Recording stopped within a reasonable amount of time following his emails to Councilman Squilla's office. (T. 71).

C. Howard Paull and Maria Vickers

Ms. Bona and Mr. Klein were not alone in finding that the volume of the Crying Baby Recording was excessively loud. Two other residents provided similar testimony. Mr. Paull, a resident on the 11th floor, explained that the Crying Baby Recording would "just go on for hours and hours, and hours." (ALJD 5:25-27). As a result of the volume level, Mr. Paull had to keep his balcony doors and windows closed – but explained even that did not prevent the noise pollution from penetrating his home. (T. 136-137). Mr. Paull described the noise as "torture" and further noted that "you can't concentrate. You can't think. [You] couldn't talk on the phone." (ALJD 5:28-30; T. 138). Instead, Mr. Paull would be forced to leave his apartment and the surrounding area to escape the sound. (T. 138).

Similarly, Ms. Vickers – a ninth floor resident of Center City One – testified that the volume of Crying Baby Recording was excessively loud and could be heard all around the city. (T. 156). Additionally, Ms. Vickers explained that she generally supported unions and that her father was in the Carpenters Union. (T. 161). However, Ms. Vickers testified that the Union's conduct "was not making any friends" and was actually negatively impacting supporters of the Union, like Ms. Vickers. (ALJD 5:39-44; T. 161).

2. Post Brother Representatives' Recollection

In addition to the complaints from residents in the community, employees and contractors of Post Brothers were the front line victims of the Union's blasting of the Crying Baby Recording. For example, Brandon Byrd, a subcontracted security guard supervisor who was working at 260 S. Broad Street in September and October of 2018 testified that he could remember hearing the Crying Baby Recording in the subway underground multiple blocks away. (ALJD 4:17-19; T. 168-170; GC. Ex. 13). Mr. Byrd further recounted that as a result of the Crying Baby Recording, he suffered a serious headache and eventually he and the other security guards were issued ear plugs to prevent damage to their hearing. (T. 181).

Mr. Byrd also testified that the Crying Baby Recording was so loud that he saw multiple pedestrians walk by with their fingers plugged into their ears to muffle the noise. (ALJD 4:14-16; T. 183; GC. Ex. 9). Additionally, he saw pedestrians walk by shaking their head and asking the Union to "knock it off" and "cut [the noise] down." (T. 171, 173; GC. Ex. 5, 4(a)). In response to the complaints of various pedestrians, the Union did not alter its behavior. Rather after pedestrians would complain, Mr. Donohoe would "get upset and . . . cut the volume up and say now that's loud." (T. 175).[8]

Mr. Steffa also testified regarding his recollection of the volume level explaining it was so loud that he could not hear necessary construction related communications within the Atlantic Building via the radio system. (T. 121). Further and during the Hearing, the Crying Baby Recording was played for Mr. Steffa and he was asked to identify, to the best of his recollection, the volume level that the Crying Baby Recording was being played at in the fall of 2018. However, despite turning the speakers in the Hearing Room up to their maximum level,

[8] Mr. Donohoe admitted he would engage in this practice. (T. 286-287, 299).

Mr. Steffa testified that the Hearing Room speakers "can't do justice to the speakers that [the Union] used," and explained that the volume at the site was far louder. (T. 122).

3. <u>Union Text Message Admissions</u>

Both Union representatives, Mr. Eddis and Mr. Donohoe, testified that the purpose of the Crying Baby Recording was to "advise the public." (T. 250, 286). However, internal text messages between these two Union representatives directly and unequivocally contradict this testimony. (GC. Ex. 21). In these text messages, Mr. Donohoe proudly admits that rather than advise the public, the true purpose of the Crying Baby Recording was to harm Post Brothers. He states:

> We did good today
> We got to them and that what
> We want to do
> I can just imagine how pissed they were last night w
> the volume on 7[9] lol

(GC. Ex. 21). Mr. Eddis responded via text message by laughing along with Mr. Donohoe at the pain that they caused Post Brothers and exclaiming "LOL!! People were seriously crying . . . it was way more contentious yesterday . . . Steffa was not taking it well . . . along with me going back & forth." (GC. Ex. 21). Mr. Donohoe responded by signaling his approval with three thumbs up emojis. (GC. Ex. 21). In addition, the two strategized via text message on how to best position the Crying Baby Speaker System to artificially increase the ambient noise reading in the surrounding areas and thus manipulate the sound readings to be taken by Air Management. (GC. Ex. 21).

[9] The number 7 refers to the volume dial setting on the Crying Baby Speaker System.

IV. THE UNION'S EXCEPTIONS

The Union has filed 19 exceptions to the ALJ's Decision. These exceptions can largely be separated into the following categories:

- Challenges to the ALJ's factual determinations based on the credibility of the witnesses with respect to the excessive volume of the Crying Baby Recording. (Respondent's Exceptions 1, 2, 3, 4, 5, 11 and 17).
- Challenges to the ALJ's determination that the Union's conduct amounted to coercion under Section 8(b)(4)(ii)(B) of the Act. (Respondent's Exceptions 8, 9, 10, 14, 18 and 19).
- Challenges to the ALJ's determination that the Union's conduct was not protected by the First Amendment of the United States Constitution. (Respondent's Exceptions 12 and 13).
- Challenges to the ALJ's determination that Brian Eddis's threat to Patrick Steffa amounted to coercion under subsection (ii) of Section 8(b)(4)(B) of the Act. (Respondent's Exceptions 6, 7, 15, 16, 17, 18 and 19).

For the reasons discussed herein, as well as the well-reasoned opinion of Chief Administrative Law Judge Robert A. Giannasi, the Union's exceptions should be denied in their entirety.

A. The Union's Credibility Challenges Regarding the Excessive Volume of the Crying Baby Recording Lack Merit

1. Applicable Law Regarding Credibility Determinations

The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the Board that

they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd*. 188 F.2d 362 (3d Cir. 1951).

2. The ALJ's Credibility Determinations Should Not Be Disturbed

The Union asserts that many of the ALJ's factual findings, which were largely based on credibility determinations, were erroneous. Specifically, the Union takes exception to the following findings:

Union Exception Number	Union Exception
1	To the ALJ's finding that: "the volume was often set well above level 4 and likely at level 7, as it was on the first day of the protest." (ALJD 7:41-8:6; 9:18-20)
2	To the ALJ's conclusion that: "Respondent intentionally set the speakers in such a way as to interfere with or even disrupt operations at the Broad Street site." (ALJD 8:19-21; 9:23-27)
3	To the ALJ's conclusion that: the Air Management "reports have no reliability in determining the real noise levels in this case." (ALJD 8:41-42)
4	To the ALJ's conclusion that the volume used for the time covered by the reports differed from the remainder of the protest. (ALJD, footnote 9)
5	To the ALJ's conclusion that "the noise level here was in violation of [] Philadelphia's noise regulations" (ALJD 11:42-44)
11	To the ALJ's conclusion that: "Respondent manipulated the volume of the recording and even the direction of the speakers to avoid proper readings by the authorities." (ALJD 12:6-7)

A. The Union's First Exception

In its brief, the Union takes particular umbrage to the ALJ's determination that the volume of the Crying Baby Speaker System was often set above a level 4 and likely at a level 7. As an initial matter, the specific dial setting of the Union's Crying Baby Speaker System is a complete red herring. Section 8(b)(4)(ii)(B) does not mandate a specific dial setting to constitute

coercive behavior. It is irrelevant whether the Crying Baby Speaker System was set at a 4, a 7, or a 100. All that matters is whether or not the volume that emanated from the Crying Baby Speaker System was coercively loud. The ALJ found, in no uncertain terms, that this was the case. His determination in this respect was supported by ample evidence in the record. Namely, four completely disinterested witnesses testified regarding the volume of Crying Baby Recording. One such witness (who lived across the street and 11 floors up) likened the volume of the Crying Baby Recording to "torture." (ALJD 5:26-28; T. 138). He explained that he couldn't concentrate, think or speak on the phone while the Crying Baby Recording was being played. (T. 138). Another witnesses remarked that it was a constant barrage of noise within his home – despite the fact that he had recently installed new double-paned windows and lived on the 25th floor. (ALJD 5:13-15; T. 63). In fact, the Center City One Condominium Association President at the time testified that the building received 25-30 complaints per day from residents regarding the volume of the Crying Baby Recording. (T. 68).

In addition to the testimony of these four neutral residents, three representatives of Post Brothers also testified that the volume of the Crying Baby Recording was excessively loud. For example, Brandon Byrd, a contracted security officer, testified that the volume was so loud that he needed to wear protective earplugs each day and that he could hear the Crying Baby Recording at the underground subway station multiple blocks away. (ALJD 4:11-19; T. 178-180, 182). Therefore, the Union's assertion that the ALJ improperly determined that the dial setting of the Crying Baby Recording was often set above a 4 is a red herring, meant to distract the Board from the ultimate issue at hand.

Notwithstanding the above and despite the Union's assertion to the contrary, there is ample evidence in the record to support the ALJ's determination that the Crying Baby Recording

was often played at a level above a 4. The most conclusive evidence is the Union's admission, via internal text message, that it had set the volume level at a 7. The text messages read:

> **John Donohoe**: "we did good today . . . we got them and that's what we want to do . . . I can just imagine how pissed they were last night w the volume on 7 lol."
>
> **Brian Eddis**: "Lol!! People were seriously crying . . . it was way more contentious yesterday . . . Steffa was not taking it well . . . along with me going back & forth."

Additionally, Mr. Eddis testified that at least one point the Crying Baby Recording was set to a level 7. (T. 238). These admissions, coupled with the fact that witnesses testified that the volume of the Crying Baby Recording remained relatively consistent throughout the relevant time period, is certainly sufficient for the ALJ to have determined that the Crying Baby Speaker System was often set at a level above 4.

The Union's argument in response to this boils down to "Mr. Eddis and Mr. Donohoe say that the dial was set to a 4 each day." However, the ALJ found that Mr. Donohoe and Mr. Eddis's testimony lacked credibility. (ALJD 7:8-10). In fact, the ALJ explained "Donohoe particularly had an unimpressive demeanor. He was often curt in his answers and demonstrated a unique lack of candor while testifying." (ALJD 7:12-14). Further, the ALJ stated "I also found Eddis less than fully forthcoming based on my assessment of his demeanor." (ALJD 7:11-12). Therefore, in order to determine that the ALJ's factual findings regarding the dial setting of the Crying Baby Recording were incorrect, the Board would need to credit the testimony of Mr. Donohoe or Mr. Eddis. However, the Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the Board that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd*. 188 F.2d 362 (3d Cir. 1951). The Union has certainly failed to satisfy this exceedingly high burden.

B. The Union's Second and Eleventh Exceptions

The Union's second exception asserts that the ALJ improperly found that the Union had intentionally positioned the Crying Baby Speaker System in a manner designed to interfere with or even disrupt Post Brother's operations. The Union's eleventh exception similarly challenges the ALJ's findings regarding the positioning of the Crying Baby Speaker System. These exceptions are directly contradicted by the record. First, there is photographic and video evidence that conclusively demonstrates that the Crying Baby Speaker System was pointed directly at the Post Brothers construction site. (G.C. Ex. 8(a) and (b), G.C. Ex. 23). If the Union's goal was truly to advise the public (rather than coerce Post Brothers) the speakers would have been directed outward and toward the public – which they were not. Additionally, the ALJ relied on the credited testimony of three Post Brother representatives who uniformly testified that that the speakers always faced the construction site. (ALJD 8:8-10). Lastly, the internal text messages between Mr. Donohoe and Mr. Eddis make clear that the only time that the speakers were pointed away from the Atlantic Building was when the Union wanted to manipulate noise readings to be taken by city officials. (G.C. Ex. 21). Therefore, the Union's second and eleventh exceptions are without merit and must be denied.

3. <u>The Union's Third, Fourth and Fifth Exceptions</u>

The Union's third, fourth and fifth exceptions all concern the ALJ's factual finding that the Union's broadcast of the Crying Baby Recording violated Philadelphia's Noise Ordinance (despite the fact that no formal violation was issued). It should be noted that Board and Third Circuit caselaw are clear – a city noise violation is not a necessary prerequisite to a finding that a union's conduct is coercive under Section 8(b)(4)(ii)(B). *See Society Hill Towers' Ass'n.*, 335 NLRB 814, 815, 820 823, 826 829 (2001), *enforced*, 50 Fed, Appx. 88 (3d Cir. 2002). Additionally, the record more than sufficiently supports the ALJ's finding. First, the Union's

internal text messages show that they had planned to "appeal" a noise ordinance violation – implicitly admitting that such a violation had occurred. Second, the Union's text messages demonstrate that they strategically placed the Crying Baby Speaker System in a way that would manipulate the sound readings. Specifically, Mr. Donohoe explained via text message that he would:

> Position speakers away from building so that the reading across street will be higher and benefit us when they take close reading . . . In the morning I'm gonna try and investigate where they are allowed to take readings at.

Third, the ALJ correctly noted that the reports in which the Union asserts exonerate them only cover a small fraction of the days in which the Union blasted the Crying Baby Recording.[10] (ALJD 9: Note 9). Fourth, the ALJ properly found that Mr. Everly, the Air Management representative that visited the site, admitted that he did not want to give the Union a citation despite the fact that his notes demonstrate that the Crying Baby Recording was being played at a noise level above the city's limits. (ALJD 9:7-10). Fifth, the record contains photographic evidence of Mr. Everly's handwritten notes which document that the Crying Baby Recording was out of compliance. (ALJD 6:17-20; GC. Ex. 11, 15). Sixth, the Union failed to call Mr. Everly as a witness to explain the meaning of the readings or his notes. (ALJD 9:3-4). Accordingly, there is ample evidence in the record to support the ALJ's determinations regarding the fact that the Crying Baby Recording was played at a noise level that violated the Philadelphia noise ordinance. The Union's exceptions to these findings, therefore, must be denied.

[10] In fact, the ALJ stated "But evening assuming [the September 19, 2018 report] was accurate for the hour and half covered by the report, the noise levels the remainder of that day and other days of the protest were well beyond normal, based on the overwhelming evidence in support of my findings and credibility determinations." (ALJD 9: Note 9).

B. The Union's Conduct Amounted To Coercion Under Section 8(b)(4)(ii)(B)

The Union's next group of exceptions (Union's Exceptions 8, 9, 10 and 14) challenge the ALJ's conclusion that the Union's conduct amounted to a violation of Section 8(b)(4)(ii)(B) of the Act. Specifically, the Union's exceptions are:

Union Exception Number	Union Exception
8	To the ALJ's conclusion that: "the Respondent's repeated use of the crying baby recording at an excessive volume meets the Board's definition of coercion in *Eliason* and thus violated Section 8(b)(4)(ii)(B)." (ALJD, 11:19-23)
9	To the ALJ's application of, and refusal to distinguish, *Carpenter's (Society Hill Towers Owners' Assn)*, 335 NLRB 814, enforced, 50 Fed. Appx. 88 (3d Cir. 2002) ("*Society Hill*"), from the facts of this case. (ALJD, 11:21-12:33; 12:27-31)
10	To the ALJ's conclusion that the Respondent's audio recording "had no purpose but to interfere with the neutral employers working at the Broad Street site." (ALJD, 11:41-42; 12:8-9)
14	To the ALJ's finding that Respondent playing an audio recording was coercive under Section 8(b)(4)(ii)(B) of the Act. (ALJD, 11:7; 11:19-21; 14:9-12)

1. Applicable Law Regarding Section 8(b)(4)(ii)(B) Conduct

For a violation of Section 8(b)(4)(ii)(B) to be found, the conduct in question must "threaten coerce or restrain" (the "coercion prong"), and at least one purpose for this conduct must be to force or require *any person to cease* doing business with another person (the "unlawful object" prong). *Subject: Serv. Employees Int'l Union (Verizon-Maryland, Inc.)*, No. Case 5-CC-1258, 2002 WL 31994806, at *3 (Dec. 6, 2002). In this case, the Union has conceded the "unlawful object" prong and thus our singular inquiry is with respect to the "coercion prong."

The Board has broadly defined coercion to include "non-judicial acts of a compelling or restraining nature, applied by way of concerted self-help consisting of a strike, picketing, or other economic retaliation or pressure in a background of a labor dispute." *Carpenters, Kentucky State Dist. Council (Wehr Constr., Inc.)*, 308 NLRB 1129, 1130 n. 2. Union conduct aimed at a secondary employer ranges from union picketing which clearly is coercive to peaceful handbilling which is not. *Compare*, *NLRB v. Retail Clerks Local 1001 (Safeco Title Ins. Co.)*, 447 U.S. 607, 616 (1980) ("picketing spreads labor discord by coercing a neutral party to join the fray"), with *DeBartolo Corp. v. Building and Construction Trades*, 485 U.S. 568, 580 (1988) (peaceful handbilling unaccompanied by violence, picketing, or patrolling not coercive and not violative of 8(b)(4.))

Importantly, the Board has found that traditional picketing is not the sole conduct that constitutes coercive behavior. Rather, the Board has found many types of conduct to be coercive even though they did not involve strike or picketing activity. *See, e.g., Carpenter's (Society Hill Towers' Ass'n.),* 335 NLRB 814, 815, 820-823, 826-829 (2001), *enforced,* 50 Fed. Appx. 88 (3d Cir. 2002) (union's broadcasting of message at amplified noise levels in the city of Philadelphia prompting numerous resident complaints found to be coercive); *United Scenic Artists, Local 829 (Theater Techniques, Inc.),* 267 NLRB 858, 859 (1983) (threatening employer with a monetary fine for not acquiring union work found to be coercive), *enf. denied*, on other grounds, 762 F.2d 1027 (D.C. Cir. 1985); *Carpenters, Local 742 (J.L. Simmons Co.)*, 237 NLRB 564, 565 (1978) (demand for premium pay as a *quid pro quo* for the use of non-union materials found to be coercive); *Ets-Hokin Corp*., 154 NLRB 839, 842 (1965) (coercive prong satisfied where the union threatened to cancel a collective bargaining agreement due to employer's non-union subcontracting), *enf'd*, 405 F.2d 159 (9th Cir. 1968); *Pye v. Teamsters Local Union No. 122*,

61 F.3d 1013, 1022 (1st Cir. 1995) (coercive conduct found where union deployed large numbers of its members to liquor stores to make numerous small purchases with large bills).

Whether a particular activity is "coercive" under Section 8(b)(4)(ii) depends on the "coercive nature of the conduct, whether it be picketing or otherwise." *NLRB v. Fruit and Vegetable Packers, Local 760*, 377 U.S. 58, 68 (1964). Union conduct intended to send a message that does more than appeal to the listener's rationale cognitive processes by argument or persuasion, may well amount to coercion.

2. The ALJ Properly Adhered to the Principles Articulated in *Society Hill Towers* in Reaching the Conclusion that the Union Violated the Act and therefore the Unions eighth, ninth, tenth and fourteenth exceptions must be denied.

Whether a union's use of amplified noise amounts to unlawful "coercion" under the Act is not a novel question of Board law. Rather, in Philadelphia, Pennsylvania alone there is a case factually analogous to the matter *sub judice*. The ALJ properly relied upon this precedent in finding that the Union had violated the Act.

In *Society Hill Towers' Ass'n.,* two Philadelphia housing complexes hired non-union contractors to perform carpentry work in their respective buildings. 335 NLRB 814, 815, 820-823, 826-829 (2001), *enforced,* 50 Fed, Appx. 88 (3d Cir. 2002). Upset with these buildings' decision to not utilize union labor, the Carpenters began broadcasting an audio recording containing a message to the public from a property located adjacent to the buildings. 50 Fed, Appx. at 89. The Carpenters played these recordings continuously for periods ranging from 45 minutes to two hours, spanning across multiple weeks. *Id.* At times, the Carpenters would bring multiple speakers to the site and play the recordings in an unsynchronized manner to create a "garbled" noise. *Id.* Many residents in the buildings complained that the volume was excessively loud. *Id.* In response, the Air Management Division of the Philadelphia Department of Health attempted to take noise readings to establish a violation of the city's noise ordinance.

Id. at 90. However, the Carpenters actively engaged in tactics to prevent the authorities from accurately measuring the noise level. *Id.*

In determining that the Carpenters broadcasts were conducted at excessive volume levels and therefore constituted coercive conduct that is prohibited by Section 8(b)(4)(ii)(B), neither the administrative law judge, the NLRB nor the Third Circuit relied on the citations (or lack thereof) from the City of Philadelphia. *Id.* at 91. Instead, the Carpenters' actions were found to have violated the law due to the number of resident complaints and the fact that the Carpenters often times played the recordings in an unsynchronized manner. *Id.* Additionally, the Carpenters actions in attempting to thwart the City in testing the noise volume was found to be evidence of the Union's guilty conscience in its knowledge that the broadcasts were excessively loud. *Id.*

Despite the Union's assertion in its exceptions, the Union's actions in the instant case are nearly identical to those in *Society Hill Towers*. Like *Society Hill Towers*, the Union here broadcasted the Crying Baby Recording through the use of two portable speakers, continuously for hours at a time over a multiple week period. Additionally, because of the high volume in which the Crying Baby Recording was played, nearby residents, both here and in *Society Hill Towers* complained. Specifically, the Condominium Board President of Center City One testified that the building was receiving approximately 25-30 complaints ***each day***. Multiple residents of this building testified that the volume was disruptive to their daily life and could be heard on the 9th, 11th, 23rd and 25th floors.

One resident described the noise as "torture" and explained that because of the noise he couldn't concentrate, think or talk on the phone. Another resident explained that even 25 floors up, the noise still felt like a "constant barrage in his own home" and likened the volume level to that of a teenager playing "outrageous music in a room and . . . disrupting [his] whole home." It

should be noted that these residents are entirely neutral and have no connection to either the Charging Party or the Respondent. In fact, many of the residents explained that they were "for labor" or had family members that were in a union.

The similarities to *Society Hill Towers* continue. In *Society Hill Towers*, the Carpenters would at various times broadcast its message through multiple unsynchronized speakers creating garbled noise as opposed to a clear message to the public. Here, the Crying Baby Recording mostly consisted of the wailing sounds of a baby in distress that did not serve to inform the public. The Union attempts to sidestep this fact in its brief by proclaiming that its message was "clear and not merely noise issued for the purpose of disruption." However, a review of the Crying Baby Recording demonstrates that over 80% of the recording consisted of just the crying baby – which clearly does not advise the public of any message but rather is akin to the garbled noise in *Society Hill Towers*. The ALJ agreed with this conclusion and found that the Crying Baby Recording was "far more disturbing and contained less of a relevant verbal message than the spoken works that made up the entire message in *Society Hill [Towers]*." (ALJD 11:36-38).

Lastly, in *Society Hill Towers*, the Carpenters conduct in intentionally thwarting the city's attempt to get an accurate reading of the noise level demonstrated probative evidence that the Carpenters were fully aware that its broadcasts were being conducted at excessive volume levels. Again, the Union's attempt to distinguish its conduct from *Society Hill Towers* must fail. While the Union argues that there is no evidence of disruptive intent, the Union's internal text messages evidence a very different picture. For example, Mr. Donohoe explains his scheme as follows: he will "Position speakers away from building so that the reading across street will be higher and benefit us when they take close reading . . . In the morning I'm gonna try and investigate where they are allowed to take readings at." Later, Mr. Donohoe further admits his knowledge of the

excessive volume by texting "we did good today . . . we got them and that's what we want to do . . . I can just imagine how pissed they were last night w the volume on 7 lol." Mr. Eddis gleefully responds "Lol!! People were seriously crying . . . it was way more contentious yesterday . . . Steffa was not taking it well . . . along with me going back & forth." Mr. Donohoe signaled his approval by responding with three thumbs up emoji's.

These text messages unquestionably show: (a) the Union was well aware that its broadcasting of the Crying Baby Recording was being done at an excessive volume and (b) the Union knew that the city would be testing the volume levels and wanted to artificially manipulate these readings to obfuscate the true volume in which they intended to blast the Crying Baby Recording. These tactics are remarkably similar to those utilized in *Society Hill Towers* and the ALJ was correct in finding as such. Accordingly, the Union's exceptions regarding the ALJ's finding that the Union had violated Section 8(b)(4)(ii)(B) must be denied.[11]

C. <u>The Union's Conduct is Not Protected By The First Amendment</u>

The Union's next group of exceptions (Respondent's Exceptions 12 and 13) center on the premise that the First Amendment protects the Union's right to broadcast the Crying Baby Recording and therefore in doing so it did not violate Section 8(b)(4)(ii)(B) of the Act. Specifically, the Union's exceptions state:

[11] In its brief the Union asserts that the Crying Baby Recording was "effective" in garnering the attention of the public. Post Brothers does not necessarily dispute this fact. However, "effectiveness" is not the appropriate test to determine the legality of a tactic. For example, if a union were to stand on the public sidewalk and physically slap pedestrians in the face with handbills, such tactic would be extraordinarily effective in gaining the attention of the pedestrian. However, while "effective," this conduct would certainly be criminal and violate the Act.

Union Exception Number	Union Exception
12	To the ALJ's conclusion that Respondent playing its audio recording was not protected by the First Amendment and to his refusal to apply the *Catholic Bishop* rule by finding that the Union violated Section 8(b)(4)(ii)(B) of the Act. (ALJD, 12:22-41)
13	To the ALJ's conclusion violating the First Amendment as applied by finding that the Union violated Section 8(b)(4)(ii)(B) of the Act. (ALJD, 12:22-41)

In *International Longshoremen's Ass'n v. Allied Int'l*, 456 U.S. 212, 226-27, 102 S.Ct. 1656, 72 L.Ed.2d 21 (1982), the Supreme Court noted:

> We have consistently rejected the claim that secondary picketing by labor unions in violation of § 8(b)(4) is protected activity under the First Amendment . . . . It would seem even clearer that conduct designed not to communicate but to coerce merits still less consideration under the First Amendment. The labor laws reflect a careful balancing of interests . . . . There are many ways in which a union and its individual members may express their [views] without infringing upon the rights of others.

456 U.S. at 226-27 (citations omitted). Similarly in *Society Hill Towers*, the Third Circuit explained that "In this case, the excessive volume and the lack of synchronization of the broadcasts make the Union's conduct subject to the Board's legitimate regulation." *See also Kovacs v. Cooper*, 336 U.S. 77, 86-87, 69 S.Ct. 448, 93 L.Ed. 513 (1949) (local ordinance prohibiting "loud and raucous" noise was a constitutional time, place and manner restriction that could be invoked to regulate a labor protestor's use of an amplified sound truck). The Union's conduct—which as explained is nearly identical to that of the Carpenters in *Society Hill Towers*—is entitled to no further First Amendment protection.[12]

[12] The Publicity Provision of Section 8(b)(4) and Section 8(c) similarly does not protect the Union's conduct as it does not protect coercive conduct. *See Society Hill Towers*, 50 Fed, Appx. at 91.

D. The Union's Challenges Regarding Brian Eddis's Threat To Patrick Steffa Lack Merit.

The Union's next group of exceptions (Union's Exceptions 6, 7 and 15) attack the ALJ's credibility determinations regarding whether Mr. Eddis threatened Mr. Steffa by threatening to burn down a bar owned by Patrick Steffa—a Post Brothers representative. Specifically the Union's exceptions state:

Union Exception Number	Union Exception
6	To the ALJ's finding that: "Eddis did not refute Steffa's testimony about the recent fire near Steffa's bar." (ALJD, 10:9-10)
7	To the ALJ's finding that: "Eddis [did not] deny telling Steffa that, if Major Electric left, so would the recording of the crying baby." (ALJD, 10:10-11)
15	To the ALJ's finding that Eddis told Steffa that the crying baby would "leave also" if "Major Electric left the Broad Street site" and the conclusion that this shows that the alleged threat was sufficiently related to the admitted secondary objective. (ALJD, 13:1631)
16	To the ALJ's conclusion that there "was at least an implied threat of physical harm or harm to the property of a representative of a neutral to the Respondent's dispute at the Broad Street site" and that this "amounted to coercion under subsection (ii) of Section 8(b)(4)(B) of the Act." (ALJD, 13:4-31; 14:14-16)

1. The Union's Sixth and Sixteenth Exceptions

In the Union's sixth exception, the Union asserts that the ALJ improperly found that Mr. Eddis failed to refute Mr. Steffa's testimony about a recent fire near Mr. Steffa's bar. The Union's exception, however, confuses the issues. As a reminder, Mr. Steffa testified that he owns a bar in the Bridesburg section of Philadelphia. Mr. Steffa further testified that in December 2017 there was a fire at a bar near the bar that he owns in Bridesburg. This testimony is what the ALJ found was unrefuted, (i.e. whether there was a fire at an adjacent bar in 2017). The record confirms that this finding is correct.

The Union's exception, however, conflates the issues and improperly asserts that the ALJ found that Mr. Eddis failed to deny threatening Mr. Steffa's bar during the Union's protest at the Atlantic Building in 2018. The ALJ made no such finding. To the contrary, the ALJ found that while Mr. Eddis denied threatening Mr. Steffa, his testimony was unreliable. Specifically, the ALJ stated "I credit Steffa over Eddis…[Mr. Steffa's] testimony about the Eddis conversation was straightforward and similarly believable, based also on his truthful demeanor. In contrast, Eddis was not a credible witness on a number of other issues, as mentioned above. I did not find his testimony on this issue any more credible, especially in view of his apparent contradictory testimony as show above . . . ."

Further, the record fully supports the ALJ's conclusion regarding this credibility determination as Mr. Eddis' testimony was extremely unreliable.[13] For example, Mr. Eddis insisted that the Union's purpose in broadcasting the Crying Baby Recording was to advise the public. Yet, the text messages between Mr. Eddis and Mr. Donohoe demonstrate that in fact, their goal was to punish Post Brothers. When confronted with these "smoking gun" text messages, the ALJ had to specifically instruct Mr. Eddis "to be honest" in his testimony. (T. 261). However, Mr. Eddis continued to insist that the Union was not trying to punish anyone. Further, Mr. Eddis testified that he did not know if Mr. Steffa was irritated by the Crying Baby Recording. However, the text messages clearly establish that the Union not only knew that Mr. Steffa was bothered by the Crying Baby Recording but further that the Union was celebrating their success in irritating him.[14]

[13] Similarly, the Union's seventeenth exception—challenging the ALJ's credibility determinations broadly—must be denied for the reasons stated herein.

[14] In addition to this example, Mr. Eddis also:

1. Failed to concede that the Crying Baby Recording amounted to "pressure." (T. 270).

In comparison, Mr. Steffa's testimony was far more reliable. First, Mr. Steffa's testimony contained no inherent contradictions. Additionally, during cross-examination Mr. Steffa explained that as a result of Mr. Eddis's threat, he increased the security at his bar by installing surveillance cameras. (ALJD 9:39-41). Notwithstanding this financial investment in security, the Union in its brief attempts to discredit Mr. Steffa for not "mitigating" the threat at the time that Mr. Eddis threatened his bar. The Union's argument, however, completely omits any discussion regarding Mr. Steffa's actions in having surveillance cameras installed at his bar. Certainly the installation of a security cameras constitutes a mitigation tactic. Accordingly, the Union's sixth exception must be denied. [15]

2. <u>The Union's Seventh and Fifteenth Exception</u>

The Union's seventh and fifteenth exceptions take offense to the ALJ's finding that Mr. Eddis informed Mr. Steffa that if Major Electric left the site, so would the Crying Baby Recording. According to the Union, it was improper for the ALJ to use this statement to establish a nexus between the threat and the secondary object because the Union had already admitted its secondary object by virtue of a joint stipulation. The Union's exception, however, misses the point entirely. The ALJ relied upon this statement for the purpose of establishing <u>*why*</u> Mr. Eddis would have threatened Mr. Steffa's bar. If the reason for Mr. Eddis's threat had nothing to do with the labor dispute (i.e. if it were due to a personal conflict) it would not be a violation of 8(b)(4)(ii)(B). However, the ALJ correctly found that "the record contains no other

2. Refused to acknowledge that a pedestrian who walked by the Crying Baby Speaker System shaking his head and refusing to accept a handbill was complaining about the crying baby. (T. 264-265).

3. Insisted at first that there was no "rhyme or reason" for the speakers' placement but shortly thereafter testified as to reasons in which the speakers were moved. (T. 273).

[15] The Union asserts in its sixteenth exception that the ALJ's determination that Mr. Eddis's threat was an unlawful violation of Section 8(b)(4)(ii)(B) was predicated on the improper assertion identified in its sixth exception. As stated herein, the Union's sixth exception is meritless and thus the Union's sixteenth exception must similarly fail.

reason for Eddis's displeasure with Steffa on this occasion that would precipitate the threat that was made." (ALJD 13:27-29). Therefore, the ALJ found that the only conversation that occurred between Mr. Steffa and Mr. Eddis that would have led to Mr. Eddis's threat dealt with Post Brother's use of Major Electric. (ALJD 13:29-30). Accordingly, it was entirely proper for the ALJ to conclude that there was a sufficient nexus between the labor dispute and Mr. Eddis's threat.[16] The Union's exception, therefore, must be denied.

V. CONCLUSION AND REMEDY

For the reasons set forth above, the Charging Party respectfully urges the Board to find no merit to Respondent's exceptions and to affirm the Judge's findings and conclusions that Respondent violated Section 8(b)(4)(ii)(B) of the Act when Respondent, with an object of forcing or requiring Post Brothers, and other persons engaged in commerce, or in an industry affecting commerce, to cease doing business with Major Electric; (1) blasted a recording of a crying baby in front of the Atlantic Building; and (2) threatened to burn down a Post Brother's representatives property.[17]

Date: July 1, 2020

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[16] The Union's assertion that secondary object had already been admitted via joint stipulation is fatally flawed because at the time that Mr. Eddis told Mr. Steffa that the Crying Baby Recording would go away if Major Electric left the site, there was no litigation pending, let alone any joint stipulations between the parties.

[17] In affirming the ALJ's decision and Conclusion of law, the Board should deny the Union's eighteenth and nineteenth exceptions.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Charging Party's (Post General Contracting, LLC d/b/a Post Brothers) Answering Brief To Respondent's Exceptions To The Chief Administrative Law Judge's Decision was electronically filed and served on July 1, 2020 on the following parties via electronic mail:

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